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December 21, 2007

The Honorable Joseph J. Farnan, Jr.
United States District Court for the District of Delaware
844 North King Street, Lock Box 27
Wilmington, DE 19801

RE: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*,
C.A. Nos. 06-113-JJF & 06-604-JJF (Consolidated Cases)

Dear Judge Farnan:

Plaintiff Sepracor Inc. ("Sepracor") and defendants Dey, L.P. and Dey, Inc.'s ("Dey") jointly submit this letter in response to the Court's December 12, 2007 Order (D.I. 238) requesting a joint status report in these consolidated cases. While this letter refers to related cases, it only concerns *Sepracor v. Dey, L.P. and Dey, Inc.*, Case Nos. 06-113 and 06-604 JJF (consolidated).

This is an ANDA case filed pursuant to the Hatch-Waxman Act. Dey is one of three companies that Sepracor sued, within forty-five days, after being notified that ANDA applications with Paragraph IV certifications were filed seeking approval to market generic versions of Sepracor's XOPENEX® brand of levalbuterol hydrochloride inhalation solutions. Sepracor filed suit against the three ANDA applicants in separate actions. On October 21, 2005, Sepracor filed suit against Defendant Breath Limited in the District of Massachusetts, C.A. No. 06-10043-DPW (the "Breath case"). On February 22, 2006 and September 27, 2006, Sepracor filed suit against Defendants Dey, L.P. and Dey, Inc., in this district, C.A. Nos. 06-113 and 06-604 JJF (the "Dey case"), which have been consolidated under C.A. No. 06-113 JJF. On July 12, 2007, Sepracor filed suit against Defendant Barr Laboratories, Inc. in this district, C.A. No. 07-438 JJF (the "Barr case"). The Barr case is the subject of a separate status report being filed concurrently. The Dey and Barr cases are now pending before Your Honor. The earliest-filed Breath case in the District of Massachusetts is scheduled for trial in July of 2008.

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In these consolidated cases, fact discovery closed on December 14, 2007. Opening and rebuttal expert reports have been served, and the following dates have been scheduled.

<i>Event</i>	<i>Date</i>
Exchange List of Terms to be Construed	December 19, 2007
Supplemental Expert Reports Due	January 10, 2008
Expert Discovery Complete	March 13, 2008
Submission of a Joint Claim Construction Chart	April 10, 2008
Opening Markman Briefs	April 10, 2008
Answering Markman Briefs	May 1, 2008


The Court has not set a date for a Markman hearing or Trial, and Magistrate Thyne determined that, in accordance with the practice of the Judges in Delaware, no dispositive motions will be filed in this ANDA case.

The only motion currently pending is Dey's Motion to Strike Plaintiff's Allegations Concerning Willful Infringement (D.I. 68). Briefing is complete on that motion.

Regarding the earlier-filed Breath case in the District of Massachusetts, all discovery other than expert depositions has been completed. Markman briefing is scheduled to be completed by January 28, 2008 with the Markman hearing taking place on February 21 and 22, 2008. The court in the Breath case has indicated that it will try to issue a Markman ruling within 45 days of the hearing. Trial in the Massachusetts case is currently scheduled for July 14 – August 1, 2008.

Finally, as noted above, the Court has not set a date for a Markman hearing or trial in this matter. Dey respectfully requests a status conference for the purpose of scheduling a Markman hearing date and/or trial date. Sepracor and Dey are available at the Court's convenience for such a conference.

Respectfully submitted,



Richard D. Kirk (rk0922)

cc: Original to Court, by hand
All counsel of record as shown on attached service list

CERTIFICATE OF SERVICE

The undersigned counsel certifies that, on December 21, 2007, he electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send automatic notification of the filing to the following:

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The undersigned counsel further certifies that, on December 21, 2007, copies of the foregoing document were sent by email and hand to the above local counsel and by email and U.S. Mail to the following non-registered participant:

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/s/ Richard D. Kirk (rk0922)
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